IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

WP(C).No. 4550 of 2005(N)

OS.265/2003 of MUNSIFF COURT, PUNALUR

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PETITIONER:

JACOB, CHARUVILA PUTHEN VEEDU,
NEERAICODU, AYROORMURI, EDAMULACKAL VILLAGE,
PATHANAPURAM TALUK.

BY ADV. SRI.B.JAYASURYA

RESPONDENTS:

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1. **MINIMOLE, W/O. VARGHESE,**
   VAZHAVILA MELETHIL, AYROORMURI, EDAMULACKAL VILLAGE, PATHANAPURAM TALUK.

2. **PHILIPOSE VARGHESE, VAZHAVILA MELETHIL**
   AYROORMURI, EDAMULACKAL VILLAGE,
   PATHANAPURAM TALUK.

BY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.4550/2005 N

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE REPORT SUBMITTED BY THE PROCESS SERVER.**

EXT.P2: **COPY OF THE JUDGMENT DTD. 2/09/2003 IN O.S.NO.265/2003 PASSED BY THE 1ST RESPONDENT.**

EXT.P3: **COPY OF THE DECREE DTD. 2/09/2003 IN O.S.NO.265/2003 PASSED BY THE 1ST RESPONDENT.**

EXT.P4: **COPY OF THE ORDER IN I.A.NO.1023/2004 CONDONING THE DELAY.**

EXT.P5: **COPY OF THE ORDER IN I.A.NO.1022/2004 SETTING ASIDE THE EXPARTE DECREE.**

EXT.P6: **COPY OF THE I.A.NO.1022 OF 2004 FILED BYTHE 2 & 3RD RESPONDENTS BEFORE THE 1ST RESPONDENT.**

/TRUE COPY/

KSS

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 4550 of 2005

Dated this the 29th day of June, 2007

JUDGMENT

The writ petition is remaining defective for non completion of service of notice on the first respondent. But it is seen that the 2nd respondent was also a co-petitioner in the I.As along with the first respondent. Since the 2nd respondent is served with notice, he can represents the interest of the first respondent also. Hence the writ petition is not defective.

2. The plaintiff is the petitioner in this writ petition under Article 227 of the Constitution. He impugns Ext.P5 order passed by the learned Munisiff on an application to set aside ex-parte decree filed by the defendants. The petitioner also impugns Ext.P4 order passed by the learned Munsiff on an application for condonation of delay caused in the matter.

3. The grievance of the petitioner is that it was without considering the objections which he had filed to applications filed by the respondents that the learned Munsiff allowed the I.As. By

Exts.P4 and P5. Ext.P4 is an order passed on the application for condonation of delay. The delay, I informed, was about 9 months. In Ext.P5, the learned Munsiff says that since the service was served by affixture, the same is vitiated and there is ground to set aside the ex-parte decree. I am of the view that the learned Munsiff ought to have considered the objections raised by the petitioner to the application and pass a reasoned orders on both the applications.

Accordingly, I set aside Exts.P4 and P5 and direct the learned Munsiff to pass fresh orders in I.A.No.1023/2004 and 1024/2004 at any rate within two months of receiving a copy of this judgment. The learned Munsiff is not expected to condone the delay as a matter of course and will remember that service by affixture is also a mode of service envisaged by Order 5 Rule 20 of the CPC.

PIUS C. KURIAKOSE,
JUDGE.

dpk